



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 8, 1998

Mr. Frank M. Crull
Assistant General Counsel
Texas Department of Public Safety
5805 N. Lamar Boulevard
Austin, Texas 78773-0001

OR98-2398

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118934.

The Department of Public Safety received a request for "police reports" pertaining to two incidents. You advise that you have no information concerning one of the incidents. You submit a representative sample of information regarding the other incident, but claim that this information is protected from required disclosure under section 552.103 of the Government Code, the "litigation exception."¹

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

You advise that the requested reports relate to an appeal pending in the U.S. 5th Circuit Court of Appeals. We have reviewed the material you submitted in support of your

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

claim that litigation is pending. That material on its face indicates that the litigation you refer to has concluded with the granting of defendant's motion for summary judgment and a July 14, 1998, denial of plaintiff's application for rehearing *en banc*. See, *Colston et al v. Barnhart et al*, No. 96-40634, U.S. Ct. App. 5th Cir., July 14, 1998. Accordingly we conclude that you have failed to establish that the requested information may be withheld under section 552.103(a).

We note, however, that the information you submitted contains motor vehicle record information which must be withheld under section 552.130 of the Government Code as well as information made confidential under section 552.101 of the Government Code in conjunction with V.T.C.S. article 4495b, the Medical Practice Act.

Section 552.130 excepts, *inter alia*, Texas driver's license and license plate information from disclosure except as provided by chapter 730 of the Transportation Code. We find no provision in chapter 730 permitting release of the information here. We have marked the motor vehicle record information in the records you submitted which must be withheld under section 552.130.

Section 552.101 of the Government Code requires withholding of information made confidential by statute. The Medical Practice Act, V.T.C.S. article 4495b, provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). We have marked the documents that you must withhold pursuant to article 4495b. Except as noted above, the submitted information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

Ref: ID# 118934

Enclosures: Marked documents

cc: Mr. Michael Burns
Real TV
1040 N. Palmas Avenue, Stage 2
Los Angeles, California 90038
(w/o enclosures)